



U.S. Department of the Interior  
Bureau of Land Management

# Summary of Court Findings

## San Juan Citizens Alliance vs BLM and USFS



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# Introduction

- Collective group of Citizens challenged 13 leases.
- BLM approved the leases in the Santa Fe National Forest (SFNF).
- Leasing was in the Easternmost part of the SJ Basin.
- Joint defendants (agencies) involve include BLM and USFS
- Document filed June 14 2018.
- Case document #33 reviewed-49 pages long.



# Introduction

- Key issue-no quantification and impact analysis of indirect effects such as combustion/downstream GHG emissions.
- Court document addresses mostly climate change, GHG and air quality issues and to a lesser extent, water issues.
- Overall the court granted the Plaintiff relief in part and denied in part.
- Document can be found at <https://westernlaw.org/wp-content/uploads/2016/05/2018.06.14-SFNF-Final-Opinion-and-Order.pdf>



# Background

- Nearly 3 years ago, 2015 BLM approved 13 parcels for leasing.

## Historical

- 1987 Land RMP (The Forest Plan)
- 1998-2012 Several Expressions from Oil and Gas Industry
- 2003 BLM Farmington RMP and Final EIS (Document did not satisfy the Forest Service NEPA requirements)
- 2008-Final EIS and ROD (USFS)
- 2008 USFS Appeal Officer remanded the EIS for more work as it relates to AQ



# Background

- 2012 Supplement to the 2008 EIS issued including 2006-2011 AQ data
- 2008 document and it's 2012 Supplement was used to amend the 1987 Forest Plan
- USFS says the documents are adequate for offering lands for competitive leasing
- BLM adapted the EIS
- 2015-BLM issues an EA and ROD to approve the 13 parcels in question



# Key Issues Addressed in the Case

- Indirect Effects, Combustion and to a lesser extent downstream emissions from GHG's.
- Cumulative Effects
- Air Resources Technical Report (ARTR)
- Mitigation



# Indirect Effects

## BLM's Statement(s)

*...Nor is consumption an indirect effect of oil and gas production because production is not a proximate cause of GHG emissions resulting from consumption.*

*However, emissions from consumption and other activities are accounted for in the cumulative effects analysis.*



# Indirect Effects

- Court ruled that the wording from the above language was not consistent with case law results and poorly written.
- Courts determined that combustion emissions are a foreseeable result of O&G and Coal leasing.
- The Court then gave at least 6 previous cases (2015-2018) in which consumption, downstream emissions or combustion of the coal, oil or gas were reasonable foreseeable.
- Those cases were: 2-3 out of Montana, 2 cases out of Colorado and at the U.S. District Court (FERC with its pipeline project).





# Cumulative Effects

*However, emissions from consumption and other activities are accounted for in the cumulative effects analysis.*

Courts said:

- BLM did not though include these GHG emissions in the cumulative effects section.
- BLM must re-access the EA for cumulative emissions.
- BLM did use the broad cumulative effects language of the ARTR and incorporated it.
- This was ok to do through 40 CFR 1502.20 and to move it into more specific analysis.
- Basically saying in this stage of the game it's ok to use.



# Air Resource Technical Report (ARTR)

- Plaintiffs gave several reasons why reliance on the ARTR was improper, including a statement that the document not subject to NEPA Review.
- The courts found that the document did not need to be subject to NEPA review and that BLM can incorporate in accordance with CEQ (40 CFR 1502.21).
- However the reference should be cited and its content briefly described.



# Air Resource Technical Report (ARTR)

- Also the document should be made reasonably available for inspection within the timeframe allowed for comment.
- When BLM published the 2015 Draft EA for the leases it also published and provided the URL which the ARTR could be obtained.
- This was published prior to the comment period.



# Mitigation

Courts said:

- No error in BLM's deferral of further analysis to the APD permitting stage of analysis.
- Mitigation applied on a case-by-case basis and evaluated in the NEPA APD.
- Site specific proposal is needed in order to access possible mitigation strategies.



# Mitigation

Generally speaking:

- At the leasing stage-not sure if development activities will occur let alone where it might occur.
- At the APD stage, BLM has site specific proposal information.
- BMPs were though include in the 2008 FEIS.



# Other Items/Areas Addressed

- Modeling in the Four Corners Area
- Under the Mitigation section, the Four Corners AQ Group was mentioned, pointing out how the group identified numerous potential mitigation strategies such as:
  - The EPA Gas Star Program
  - Emissions Reduction Techniques for Oil and Gas Activities
- WRAP
- CEQ Guidance (since revoked based on E.O. 13783) mentioned as guidance



# Summary

## Courts cited:

- BLM failed to quantify and analyze the impacts of the downstream GHG emissions.
- BLM should calculate the downstream emissions and re-analyze for the potential impacts once the recalculated emissions are complete.
- BLM may need to conduct a new mitigation analysis.
- Court declined whether or not to say that if the pre-existing site-specific analysis was sufficient in regards to Cumulative Impacts of GHGs.



# Summary

## Courts cited:

- BLM must not rely on outdated scientific information.
- Must make sure that we understand that the remand is for BLM's failure to quantify and analyze impacts of downstream GHG emissions.
- In the meantime- since you are updating other GHG data make sure you are using the most recent scientific evidence.